IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1195 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE A.L.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UNITED INDIA INSURANCE COMPANY - Appellant(s)

Versus

MADHUBEN MANIBHAI PATEL & 4 - Defendant(s)

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Appearance :

MR RR MARSHALL for Petitioner No(s).: 1.

MR HM PARIKH for Respondent No(s).: 1, 2, 3,4.

NOTICE SERVED for Respondent No(s).: 5.

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CORAM :HON'BLE MR.JUSTICE A.L.DAVE

Date : 14/07/2005

ORAL JUDGMENT

1. This appeal is preferred against the judgment and

award passed by Motor Accident Claims Tribunal (Main), Kheda, at Nadiad, in Motor Accident Claim Petitions No.146 and 411 of 1983, on 11th April, 1986.

2. The petitions were preferred by the claimants for damages on account of death of Manibhai Ranchhodbhai Patel and injury sustained by Kashiben Vithalbhai Patel in a vehicular accident that occurred on 22nd February, 1983, involving auto-rickshaw No.GTG 4947. The deceased and the injured claimant were travelling in the auto-rickshaw which was, allegedly, driven in a rash and negligent manner.

3. Motor Accident Claim Petition No.146 of 1983 was preferred by the legal heirs and representatives of deceased-Manibhai Ranchhodbhai Patel, for an amount of Rs.1 lakh, whereas Motor Accident Claim Petition No.411 of 1983 was preferred by Kashiben, on account of injuries sustained by her, for an amount of Rs.9999/-. The Tribunal found that the claimants in Motor Accident Claim Petition No.146 of 1983 were entitled to a compensation of Rs.64,000/- and the claimant-Kashiben in Claim Petition No.411 of 1983 was entitled to a compensation of Rs.6335/-.

3.1 The Tribunal held that out of the awarded amount of Rs.64,000/-, the liability of the insurer-appellant would be limited to a total amount of Rs.50,000/- only with proportionate costs and interest. Accordingly, the Tribunal ordered that liability to pay the awarded compensation to the claimant in Claim Petition No.411 of 1983 would be joint and several of both opponents. Whereas in respect of Motor Accident Claim Petition No.146 of 1983, the Tribunal held that the liability of both the opponents would be joint and several to a limited extent of Rs.43,665/- with interest at the rate of 6% and proportionate costs, and the rest of the awarded amount, only opponent No.1 would be liable along with proportionate costs and interest.

4. The appellant challenges the award on the limited aspect of liability of the insurer. It is the case of the appellant that the liability of the insurer was limited to Rs.15,000/- per passenger and, therefore, the appellant could not have been saddled with the liability to compensation as per award.

5. In this regard, learned Advocate, Mr. Adil Mirza, appearing for Mr. Marshall for the appellant, vehemently argued that the Tribunal has not considered the fact that

additional premium is not charged by the insurer for wider liability in respect of passengers. The Tribunal has committed an error in interpreting the policy and the liability of the insurer. He has drawn attention of this Court towards the policy, the premium charged thereunder and the endorsements annexed to the policy. He, therefore, submitted that this appeal may be allowed and liability of the Insurance Company may be made limited to Rs.15,000/- per passenger totalling to Rs.30,000/-.

6. The appeal is opposed to by learned Advocate, Mr. Parikh. He has contended that the Insurance Company, in fact, accepted extra premium in respect of three passengers at the rate of Rs.15/- per passenger. There is no material on record to show that the liability of the Insurance Company would be limited to Rs.15,000/- per passenger. According to him, not much reliance can be placed on limits of liability emerging from the policy copy. He submitted that, on the contrary, if the policy is perused, there is endorsement in the policy that liability of passengers would be limited to Rs.10,000/- and total liability would be limited to Rs.50,000/-. He has also drawn attention of this Court to deposition of Assistant Divisional Manager of the Insurance Company, who has, in his examination-in-chief, stated that it is a

mistake in the endorsement in the policy that liability for passenger is shown as limited to Rs.10,000/-, instead, it should be Rs.15,000/-. Mr. Parikh also submitted that, in cross-examination, the Officer of the Insurance Company has admitted that the liability of the Insurance Company in respect of any one accident would be limited to Rs.50,000/-. The Tribunal has taken into consideration all these aspects and passed the award and, therefore, the appeal may be dismissed.

6. This Court has taken into consideration rival side contentions in light of the evidence on record.

6.1 At the outset, it would be appropriate to record that the appellant has failed to produce before the Tribunal the insurance premium tariff for the relevant period. It has come on record that the tariff changes from time to time. Under the circumstances, unless it is shown that additional premium for wider unlimited liability was different from what is charged by the Insurance Company, the Insurance Company could not have pleaded that for wider unlimited liability, no premium is charged.

7. So far as the plea that the liability of the

Insurance Company would be limited to Rs.15,000/- per passenger is concerned, there also, the evidence is scanty and shaky. Heavy reliance is placed on copy of the insurance policy, which is produced by the Insurance Company itself. In that policy, even as per the say of the Officer of the Insurance Company, in his examination-in-chief, there is a mistake, i.e. the liability per passenger is shown to be limited to Rs.10,000/- whereas, in fact, it should have been Rs.15,000/-. The policy also indicates that a premium of Rs.120/- for liability in respect of three passengers is charged, i.e. Rs.40/- per passenger. The endorsement, as discussed earlier, says that the liability is limited to Rs.10,000/- per passenger, which is not correct, as per the Officer of the Insurance Company. The endorsement further indicates that liability out of one accident is limited to Rs.50,000/- and this aspect is admitted by the Officer of the Insurance Company itself in cross-examination.

7.1 Thus, what emerges is that total reliance cannot be placed on copy of the policy so far as liability in respect of any one passenger is concerned. Different stands are emerging from the Insurance Company itself, but there is no controversy insofar as total liability of the Insurance Company in respect of any one incident is

concerned. The policy speaks of Rs.50,000/- and the Officer also admits the liability of Rs.50,000/-. The Tribunal has taken into consideration all these aspects while considering the liability of the Insurance Company. The precedents relied upon by the Insurance Company have also been dealt with appropriately by the Tribunal. It cannot be ignored that, in such benevolent provisions of law, a liberal interpretation beneficial to the victim of the accident has to be adopted. There is total lack of material to support the case of the Insurance Company about its limited liability as the motor insurance premium tariff is not produced on record. There is no material to show that for wider (unlimited) liability, more premium is charged.

8. This Court is in agreement with the reasonings adopted by the Tribunal regarding liability of the Insurance Company. So far as quantum is concerned and there is no dispute and, therefore, the appeal must fail and is dismissed. The judgment and award of the Tribunal is confirmed. No costs.

[A. L. DAVE, J.]

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